HON'BLE SRI JUSTICE RAMESH RANGANATHAN

W.P.NO. 29082 OF 1997

Between:

The Executive Engineer, APSIDC Division, Eluru

… Petitioner

and

Polluri Pandurangachari and another

…

Respondents

HON'BLE SRI JUSTICE RAMESH RANGANATHAN

W.P.NO.29082 OF 1997

ORAL ORDER:

Questioning the award of the Labour Court, Guntur in I.D.No.35 of 1992 dated 17.3.1997, whereby the petitioners herein were directed to reinstate the 1st respondent-workman into service with continuity of service but without back wages, the present writ petition is filed.

While Sri T. Nageswara Rao, learned counsel for the petitioners, would contend that, though the burden of proof to establish that he had worked for 240 days in the 12 months period, preceding his termination, is on the workman and though this burden was not discharged, the labour court erred in arriving at a conclusion that the workman had completed 240 days of service in the 12 months period prior to his termination. Learned counsel

would contend that the labour court ought to have rejected the claim merely on the ground of laches as the workman had questioned the impugned order, a decade after his services were terminated.

Sri P. Raghavendra Reddy, learned counsel for the 1st respondent-workman, would point out that the witness, who deposed on behalf of the petitioners as MW-1, had himself admitted that, as per the records, the workman had worked as a Pump Operator in Nallajerla Sub-Division from 1.9.1979 to 20.5.1981. Learned counsel would submit that in view of this admission on behalf of the petitioners herein, no further evidence was required for the labour court to come to the conclusion that the workman had completed 240 days in the 12 months period preceding his termination.

The labour court examined this contention of laches and held that inordinate delay would, by itself, not be a ground for throwing out the I.D., but was a circumstance to be taken into consideration with regards payment of back wages. The labour court denied back wages to the workman for having belatedly invoked its jurisdiction. The conclusion of the labour court is in accordance with law and does not necessitate interference.

It is true that the burden is on the workman to establish that he had worked for 240 days in the 12 months period prior to his

termination. In view of the fact that MW-1, in his evidence, admitted that the workman had worked from 1.9.1979 to 20.5.1981 (for a period of one and half years), and as admitted facts need not be proved, the finding of the labour court that the petitioner had completed 240 days of service and was entitled for protection under Section 25-F of the Industrial Disputes Act, 1947 (for short 'the Act'), cannot be said either to be perverse or as based on no evidence.

I find considerable force, however, in the submission of Sri T. Nageswara Rao, learned counsel for the petitioners, that even if the labour court was justified in directing reinstatement, in view of the critical financial position of the petitioner-Corporation and as the bore-wells have been handed over to the beneficiaries and were no longer maintained by the Corporation, the labour court ought to have at least considered payment of compensation in lieu of reinstatement. Learned counsel would take this court through the portion of the award where the petitioners herein had contended that it is a fit case for payment of compensation and had produced evidence before the labour court that its financial position was critical. Except stating that the contentions raised by the petitioner-Corporation regarding its incurring financial losses, were not convincing and that authenticated evidence was not placed by the Corporation, the labour court is silent as to why the

statement in Ex.M-1, which showed the financial position of the Corporation, should not be accepted.

It is well-settled that even in cases where it is found that termination of the services of a workman is in violation of Section 25-F of the Act reinstatement need not be directed as a matter of course and the labour court has the power to direct payment of compensation in lieu of reinstatement. The contention urged on behalf of the petitioner-Corporation that its financial position was critical and that compensation be awarded in lieu of reinstatement has been cursorily rejected by the labour court without examining the evidence on record. The award of the Labour Court is, therefore, set aside.

Since the dispute relates to the year 1992, and 15 years have elapsed since then, I consider it appropriate to remand the matter back to the labour court to determine whether compensation can be awarded to the 1st respondent-workman in lieu of reinstatement and, if so, the quantum of compensation to be so awarded. The labour court shall pass an award in accordance with law, after hearing both sides, within a period of 4 months from the date of receipt of a copy of this order

The writ petition is disposed of accordingly. No costs.

RAMESH RANGANATHAN, J

DATE: 7.3.2007

CVM